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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,837	09/30/2003	Markus Cherdron	13913-087001 / 2002P10032	3769
22852	7590	11/02/2006	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			TECKLU, ISAAC TUKU	
			ART UNIT	PAPER NUMBER
			2192	

DATE MAILED: 11/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/676,837

Applicant(s)

CHERDRON ET AL.

Examiner

Isaac T. Tecklu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. This action is responsive to the application filed on 09/30/2003.
2. Claims 1-17 have been examined.

#### *Oath/Declaration*

3. The office acknowledges receipt of a properly signed oath/declaration filed on 03/15/2004.

#### *Claim Rejections - 35 USC § 101*

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1-17 are rejected under 35 U.S.C 101 because the claimed invention is directed to non-statutory matter.

6. Claims 1, 16 and 17 recite “ A computer program product, tangibly embodied in an information carrier” defined to include propagated signal (in page 18). Thus, under the Interim Guidelines such “signal” do not fall within one of the four statutory classes of 35 U.S.C. 101 (See Annex IV(c)). Therefore, the above claims are non-statutory.

A computer-readable media is a tangible physical article or object, some form of matter, which a signal (infrared)/carrier wave is not. That the other two product classes, machine and composition of matter, require physical matter is evidence that a manufacture was also intended to require physical matter. A signal/carrier wave, a form of energy, does not fall within either of the two definitions of manufacture. Thus, a signal/carrier wave does not fall within one of the four statutory classes of Sec. 101.

See Annex IV (c) Electro-Magnetic Signals, Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility (signed October 26, 2005) – OG Cite:

1300 OG 142. Online version can be retrieved at

<http://www.uspto.gov/web/offices/com/sol/og/2005/week47/patgupa.htm>

Under the principles of compact prosecution, claims 1-17 have been examined as the Examiner anticipates the claims will be amended to obviate these 35 USC 101 issues. For example, -- A computer program product, tangibly embodied in [an information carrier] a machine-readable storage device, for ... --.

Claims 2-15 are rejected for failing to cure the deficiencies of the above rejected non-statutory claim 1 above.

### ***Double Patenting***

7. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 1-5 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2, 6-8 and 10 of US Patent 6,952,620 B2.

Although the conflicting claims are not identical, they are not patentably distinct from each other because with the exception of terminology changes such that the predetermined data structure in the patent is addressed as first data structure having been declared prior to execution off the application in the application. Thus the elements in claim 1 are covered by claims 1 and 2 of the patent 6,952,620 B2. As for establishing at least a first data structure ... the first data structure having been declared prior to execution of the application in the claimed invention, the same element in claim 1 has predetermined structure. Further claim 2 of the patent recites that the predetermined structure is declared prior to execution of the application.

As per claim 2, the elements are covered by claim 10 of the patent.

As per claim 3, the elements are covered by claim 6 of the patent.

The elements in claim 4 are covered by claim 7 of the patent.

As per claim 5, the elements are covered by claim 8 of the patent.

### ***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Weitzman (US 2003/0197726 A1).

As per claim 1, Weitzman discloses a computer program product (page 18:13-page 19:46), tangibly embodied in an information carrier, the computer program product being operable to cause data processing apparatus to perform operations comprising:

establishing a model (e.g. Fig. 1, element 1 and related text), the model implementing application logic of an application; establishing at least one view for presenting the model (in paragraph [0170] "... views are created ..." e.g. Fig. 1, element 3 and related text);

establishing at least one controller for manipulating the model (e.g. Fig. 1, element 2 and related text); and

establishing at least one storage area (e.g. Fig. 8, element 804 and related text), the storage area relating to the controller and storing an instance of a first data structure, the instance of the first data structure comprising application data having been stored in the storage area by an access method (in paragraph [0077] "... instance or class variables ..." e.g. Fig. 8, element 809 and related text), the first data structure having been declared prior to execution of the application (in paragraph [0145] "... executes programs that are loaded from the storage ...").

As per claim 2, Weitzman discloses the product of claim 1, wherein the controller relates to the view, the view comprises a user interface (UI) element, and the UI element is bound to the first data structure (e.g. Fig. 8, element 813 and related text).

As per claim 3, Weitzman discloses the product of claim 1, wherein the instance of the first data structure comprises one or more node elements, each node element comprising one or more data fields based on the first data structure (in paragraph [0154] "... individual nodes communicate directly ..." e.g. Fig. 8, element 812, 802 and related text).

As per claim 4, Weitzman discloses the product of claim 3, wherein one or more of the node elements are grouped into a node collection (in paragraph [0155] "... cooperate as a grid group ...").

As per claim 5, Weitzman discloses the product of claim 4, wherein one or more of the node elements in the node collection are grouped into a node selection (in paragraph [0155] "... grid group ... using MVCT architecture ...").

As per claim 6, Weitzman discloses the product of claim 5, wherein one of the node elements in the node selection is identified as a lead selection element (in paragraph [0155] "... the status of the grid ...").

As per claim 7, Weitzman discloses the product of claim 6, wherein the controller relates to the view, the view comprises a UI element, the UI element is bound to the first data structure, and the UI element displays data from the lead selection element (e.g. Fig. 8, element 813 and related text).

As per claim 8, Weitzman discloses the product of claim 1, wherein the access method is part of an application programming interface (API) for accessing the instance of the first data structure (in paragraph [0159] "... API's ...").

As per claim 9, Weitzman discloses the product of claim 1, wherein the operations further comprise: establishing an instance of a second data structure, the second data structure having been declared to be a child of the first data structure prior to execution of the application (e.g. Fig. 8, element 809 and related text).

As per claim 10, Weitzman discloses the product of claim 9, wherein the instance of the first data structure comprises one or more node elements of a first type grouped into a first node collection, and the instance of the second data structure comprises one or more node elements of a second type grouped into a second node collection (in paragraph [0154] "... individual nodes communicate directly ..." e.g. Fig. 8, element 812, 802 and related text).

As per claim 11, Weitzman discloses the product of claim 10, wherein one of the node elements in the first node collection is identified as a selected element, and wherein the node elements in the second node collection depend on the selected element (in paragraph [0155] "... the status of the grid ...").

As per claim 12, Weitzman discloses the product of claim 10, wherein the second node collection has a state (in paragraph [0163] "... state indicates an anomaly that needs ...").

As per claim 13, Weitzman discloses the product of claim 12, wherein the state is selected from the group of valid, invalid (in paragraph [0163] "... state indicates an anomaly that needs ..."), and unfilled (in paragraph [0163] "... indicating it is fully utilized ...").

As per claim 14, Weitzman discloses the product of claim 13, wherein the operations further comprise establishing a supply function for determining the content of the node elements in the second node collection when the state of the second node collection is invalid or unfilled (in paragraph [0163] "... icons are colored to represent the aggregated ...").

As per claim 15, Weitzman discloses the product of claim 14, wherein the supply function is implemented as a method of the controller (in paragraph [0018] "... action data from a controller ...").

As per claim 16, Weitzman discloses a computer program product, tangibly embodied in an information carrier, for supplying data to a view presenting a model, the view having at least one user interface (UI) element and relating to a controller for manipulating the model (e.g. Fig.



1 and related text), the computer program product being operable to cause data processing apparatus to perform operations comprising:

creating a run-time data structure in a storage area that relates to the controller, the runtime structure based on a design-time data structure (in paragraph [0159] "... application run time ..."), the design-time data structure including a structure element that is bound to the UI element (e.g. Fig. 14 and related text); and

using a supply function to provide content for the run-time data structure (in paragraph [0159] "... status information is displayed ..." e.g. Fig. 14, element 1304 and related text).

As per claim 17, Weitzman discloses a computer program product, tangibly embodied in an information carrier, for accessing application data by an application using a model of the application and at least one controller for manipulating the model (e.g. Fig. 1 and related text), the computer program product being operable to cause data processing apparatus to perform operations comprising:

providing a storage area that relates to the controller, the storage area being organized according to a design-time data structure having declared relationships between the application data, and storing a run-time data structure that is based on the design-time data structure (in paragraph [0159] "... application run time ...");

accessing a structure element of the run-time data structure, the structure element comprising a node collection (in paragraph [0076] "... provides the access ...");

evaluating the node collection; and if the result of evaluating the node collection requires filling at least one element of the node collection (in paragraph [0010] "... determines to which views the model change notifications ... sends model change information ..."): sending a query to a computer system (e.g. TABLE 5 and related text); and

in response to the query, receiving from the computer system at least one data instance that is used to fill the at least one element of the node collection (in paragraph [0100] "... receive an event indicating ...").

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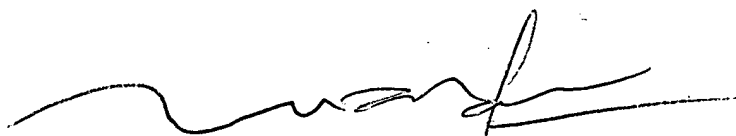
*Conclusion*

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isaac T. Tecklu whose telephone number is (571) 272-7957. The examiner can normally be reached on M-TH 9:300A - 8:00P.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam can be reached on (571) 272-3695. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Isaac Tecklu  
Art Unit 2192



TUAN DAM  
SUPERVISORY PATENT EXAMINER